

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 17-cr-20368

v.

HON. MARK A. GOLDSMITH

JIM TERRELL LATTNER,

Defendant.

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**ORDER DENYING MOTION FOR RECONSIDERATION (Dkt. 53)**

This matter is before the Court on Defendant Jim Terrell Lattner's motion for reconsideration (Dkt. 53) of the Court's Opinion & Order Denying Defendant's Motion to Suppress, see United States v. Lattner, No. 17-20368, 2018 WL 6061084 (E.D. Mich. Nov. 20, 2018). In his motion, Lattner argues that the Court was misled by a palpable defect, contending that "it is clear" from Phyllis Brown's testimony at the evidentiary hearing that "she was informing the Court that the person depicted in the photo on the first page of Exhibit 22 is the person that the officer pointed out to her and asked if that looked like the person she saw running away from the scene after the shooting." Def. Mot. at 4 (Dkt. 53). Lattner further argues that Ms. Brown is not "an experienced witness," and that she was "trying in her non-professional way to explain to the Court that the person shown in the photo looks like the person that Sgt. Wolfe asked her look at." Id. at 5. However, as the Government observed in its response (Dkt. 54), the Court has already gone through the hearing testimony and determined that Ms. Brown was equivocal in her explanation of what occurred during her conversations with police following the shooting, and that her testimony did not establish that she definitively told police that Lattner was not the person she saw running. See Lattner, 2018 WL 6061084 at \*3. While it is true that Ms. Brown is not a

“professional witness,” this does not allow the Court to augment her testimony beyond her words or to be more confident in her answers than she was herself. Her testimony at the hearing did not establish that there were material omissions from the warrant application, and thus Lattner could not succeed on his Franks motion. See Franks v. Delaware, 438 U.S. 154 (1978). Because Lattner has not shown that the Court erred in denying the motion to suppress, let alone that the Court was misled by any palpable defect, the Court denies Lattner’s motion for reconsideration (Dkt. 53).<sup>1</sup>

SO ORDERED.

Dated: January 30, 2019  
Detroit, Michigan

s/Mark A. Goldsmith  
MARK A. GOLDSMITH  
United States District Judge

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<sup>1</sup> Lattner filed a reply in support of the motion to suppress (Dkt. 56) without seeking leave of the Court. As made clear both by the Local Rules, see E.D. Mich. L.R. 7.1(h)(2), and this Court’s December 6, 2018 text-only order, see 12/6/2018 Order (“No reply may be filed without leave of Court.”), Lattner was not permitted to do so without first seeking leave. Accordingly, the Court strikes Lattner’s reply (Dkt. 56).